APPLICANTS:
Melvin Quick, Jr. and Eva Quick

REQUEST: A variance to allow cottage housing in a mobile home on less than 2 acres and to be occupied by a non-relative

HEARING DATE: April 21, 2004

BEFORE THE

ZONING HEARING EXAMINER

FOR HARFORD COUNTY

BOARD OF APPEALS

Case No. 5397

ZONING HEARING EXAMINER'S DECISION

APPLICANTS: Melvin G. Quick, Jr. and Eva Quick

LOCATION: 1106 Old Joppa Road, Joppa
Tax Map: 60 / Grid: 1E / Parcel: 298
Third Election District

ZONING: AG / Agricultural

REQUEST: Variances pursuant to Sections 267-27B(8)(b)(1) and (8) of the Harford County Code to allow cottage housing in a mobile home on less than 2 acres (1.94 acres existing) and to be occupied by a non-relative.

TESTIMONY AND EVIDENCE OF RECORD:

Melvin G. Quick, Jr., Applicant, testified that he acquired the subject property in 1963 from his parents, who had purchased the property in approximately 1923. Sometime around 1963 the Applicants placed the existing mobile home on their property. They lived in it for sometime, and in 1966 built the single family home which is presently on the property. The mobile home has continued to exist on the property since then.

Mr. Quick offered and identified a copy of a permit which had been obtained from Harford County allowing the original placement of the mobile home.

Over the years, while Mr. and Mrs. Quick have lived in the single family home, the mobile home has been occupied by various individuals, including Mr. and Mrs. Quick's son, daughter, and other unrelated individuals. The last occupants of the mobile home vacated the property in early March, 2004. Mr. Quick testified that these individuals helped look out for Mr. and Mrs. Quick and were helpful in reducing vandalism threats to their property. Mr. and Mrs. Quick felt more secure with the mobile home being occupied by people who would help protect them.

Mr. Quick determined that the lot is about 2.1 acres in size. He stated that he had reviewed his deed, which contains a particular description, checked the property lines, and found the deed description to be in error. The property is not 1.94 acres, according to Mr. Quick, but is actually 2.1 acres in size.[1]

Mr. Quick indicated that he actually owns three parcels of property, one on either side of the subject property, which in combination total about 6 ½ acres. The lot to the Mountain Road side, which is located at the intersection of Mountain Road and Old Joppa Road, is improved by a single family home. The lot to the other side, or on the east side of the Quick's property, is unimproved.

Mr. Quick is over 75 years of age, and Mrs. Quick is over 70 years of age. Mr. Quick has a heart condition, has had by-pass surgery, has an artificial knee, and is an amputee. He indicated that he is in and out of the hospital because of his various medical ailments. Because of his physical problems he finds it necessary to have someone look in on him from time to time. He takes over 30 medications per day.

Mr. Quick relayed a series of complaints and experiences he has had with vandals in the neighborhood which have resulted in numerous police calls. Mr. Quick's list of calls is delineated on Exhibit 15. Mr. Quick believes that having another person on his property, living in a mobile home, helps with the vandalism issues, and reduces his and his wife's fear of vandalism and crime.

Mr. Quick has no relatives who can live in the mobile home. His daughter has a large family for which the mobile home is too small. He has no room in his house for a caretaker and he and his wife are too set in their ways to have a caretaker present. Mr. Quick subsequently testified that his house has two bedrooms, with the third bedroom having been converted into a sewing room by his wife.

Mr. Quick stated that the State Highway Administration owns the property directly behind his house, to the north side, and that it is land locked. Mr. Quick stated that he has a bulldozer and dump truck on his property, which he uses to push snow and dirt on his property. He is no longer in the construction or excavating business and uses the equipment for personal use.

Mr. Quick reiterated that he wanted someone in the mobile home in the event he needed medical assistance, has to go to the hospital, and to prevent vandals from coming around his house.

Mr. Quick indicated that no neighbors had expressed any opposition to his request.

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[1] No other evidence to support Mr. Quick's calculations was introduced.

Next for the Applicant testified Aimee O'Neill, offered and accepted as an expert real estate appraiser. Ms. O'Neill described the subject property as being very well maintained and attractive. She stated the home is a typical home in the area, and the mobile home is a typical improvement on property in rural areas of Harford County. There exists a mixture of homes in the neighborhood, 30-35 years old according to Ms. O'Neill. The mobile home is in good condition, and is partially screened from adjoining properties and Old Joppa Road. It is very attractive, given its age.

Accordingly to Ms. O'Neill the granting of the variance would have no adverse impact on the surrounding residential properties. Mobile homes are often found in agricultural/residential properties and this is typical of those types of areas.

Next for the Department of Planning and Zoning testified Anthony McClune. Mr. McClune, in reiterating the conclusion of the Staff Report, indicated that there is nothing unique about the Applicants' topography or property. Their property is typical of all others in the neighborhood. Mr. McClune pointed out that Ms. O'Neill also concluded that the properties were typical of others in the area. The Department of Planning and Zoning believes that the variance criteria as contained in the Harford County Development Regulations have not been met.

Upon cross-examination Mr. McClune stated that the use is more of a use variance than an area variance although he admitted that the variance is from the requirements of the Code, and the Department does not consider this to be a use variance. Mr. McClune also stated that the tax records and the Application itself lists the property as 1.94 acres in size, not greater. Mr. McClune further stated that a plat could possibly be recorded which would increase the acreage to greater than 2 acres.

Mr. McClune also stated that if the variance were denied, Mr. Quick could use the mobile home for storage. Mr. McClune stated there were no violation issues concerning the subject property.

APPLICABLE LAW:

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

"Variances.

A. Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:

(1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.

(2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.

B. In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.

C. If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval."

The Harford County Development Regulations define "cottage house" as a "temporary second dwelling on a single lot".

Cottage houses are generally governed by Section 267-27B(8), as follows:

"B. Specific temporary uses. The temporary uses described below shall be subject to the following;

(8) Cottage houses.

(1) On a lot of 2 acres or less the cottage house is located within a dwelling currently on the lot;

(2) On a lot of more than 2 acres the cottage house may be located within a dwelling currently on the lot or be a mobile home;

(3) If the cottage house is a mobile home, the cottage house meets the setback requirements for transient housing uses, except that in the AG District, the minimum rear yard setback for a mobile home cottage house is 40 feet;

(4) When the cottage house is a mobile home, skirting of a compatible material is substituted for a foundation;

(5) The lot owner submits a letter of approval from the Health Department stating that the water and sewer facilities for the cottage house meet Health Department requirements;

(6) The lot owner submits a copy of the property deed and any homeowners' association agreement to which the lot is subject;

(7) The lot owner lives in 1 of the 2 dwellings on the lot;

(8) A relative of the lot owner lives in the other dwelling."

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Applicants must first of all show that they comply with the 2 acre minimum lot size requirement necessary to receive a permit for a free standing cottage house or, in the alternative, provide a basis for the granting of a variance to that requirement.

The Application states that the subject property is 1.94 acres, plus or minus, in size. The Applicants' title deed of May 16, 1966, offered as a Plaintiffs' Exhibit, contains a particular description, and indicates an acreage of 1.94 acres. The State tax bill, attached to the Staff Report as Attachment 11, indicates the property is 1.94 acres in size.

Countering this persuasive evidence of lot size is the unsubstantiated opinion of Mr. Quick, who stated that the surveyor was wrong and that his Deed was wrong, and that the property is actually slightly more than 2 acres. Mr. Quick based this opinion on his observations and apparent personal measurements of the lot. He did not, however, introduce any of his calculations, offer expert testimony, explain the alleged error in the particular description of the deed, attempt to re-compute the particular description in the deed, or provide any other basis for his opinion.

Based on the above, it is found as a matter of fact that the lot size is that as set forth in the title deed and in the records of the State Department of Assessments and Taxation at 1.94 acres in size. Mr. Quick, given every opportunity to rebut that assertion, and knowing that lot size is a major issue in the case, must do more than rely upon a simple assertion of opinion that the lot is actually 2 acres or more in size.

Accordingly, not being able to meet the 2 acre lot size, the Applicants must attempt to meet the variance requirements of the Harford County Zoning Code. The Applicants fail to do so.

Characteristics of property which may form a foundation for a finding of uniqueness were clearly set forth in North v. St. Mary's County, 99 Md. App. 502 (1994):

> "In the zoning context, the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. "Uniqueness" of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls."

The lot is a residentially used property in a relatively rural area of Harford County. It is surrounded by open space and other homes of similar type and construction. There was no identification made of any unusual surface feature, dimension, adjoining property impact, subsurface feature or impediment, or any other characteristic of an unusual, or out of the ordinary, nature. The only thing different about Mr. Quick's lot from others in the area is that he has a mobile home for which he is seeking a permit for a cottage house. This was, indeed, the only argument suggested by the Applicant in support of his request for a finding of uniqueness.

> "A hardship exists only if due to special conditions unique to a particular parcel of land, the ordinance unduly restricts the use . . . . The hardship must relate to the special character of the land rather than to the personal circumstances of the landowner."

See Cromwell v. Ward, 102 Md. App. 691 (1995) (quoting from St. Clair v. Skagit County, 43 Wash. App. 125 (1986).

In discussing the difference between a hardship related to property and a hardship related to the owner/applicant, Cromwell, stated:

> ". . . moreover, the Courts have again emphasized that a variance granted to take care of some hardship personal to the Applicant is not a unique hardship resulting from circumstances peculiar to the piece of land."

Testimony that the property is unique because the Applicant cannot do what he wishes to do is not a sufficient basis for the granting of the variance. See Chesterhaven Beach Partnership v. Board of Appeals for Queen Anne's County, 103 Md. App. 324 (1995).

It is found as a matter of fact that there is nothing unique about the Applicant's property except that a mobile home, not otherwise permitted for residential use without the variance, is located thereon. The right to use that mobile home as a cottage house is the relief the Applicant ultimately seeks. His inability to do so without the variance cannot be the reason for the granting of a variance. If that were the standard, every request for a variance would, as a matter of course, qualify for approval.

Accordingly, there being no legally sufficient showing that the Applicant's property is "unique", the Applicants are found to have failed to meet the first step of the Harford County variance provision.[2] The request for variance to the minimum lot size requirement must accordingly be denied.

It is further found that the Applicants have failed to make a showing that they are entitled to a variance to the provision of the Development Regulations which require the person who lives in the cottage house to be a relative. There is no standard in the Harford County Development Regulations which allow this provision to be modified in any way other than by the granting of variance pursuant to Section 267-11. Having failed to show that the property of the Applicant is unique in any fashion, this requested variance must, also, be denied. The Applicants suffer no impact by any unusual feature of their property so as to justify a relaxation of the requirement that a relative live in the cottage house.

Even assuming the Applicants were to be granted a variance to the two acreage minimum lot request, it is found that there is no ascertainable resulting practical difficulty as a result of any unusual feature of the property so as to justify a relaxation of the requirement that the caretaker be a relative.

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[2] The second step would be for the Applicants, once they show uniqueness, to show a resulting practical difficulty or hardship.

It is, indeed, difficult to imagine how any physical characteristic of the property could result in a practical difficulty sufficient to justify a finding that someone other than a relative be allowed to live in the cottage house. The Development Regulations are clear that the caretaker, when two dwellings are involved, must be a relative. This is not a factor which is relevant in any way to the size or physical feature of the property. As an observation only, and not as an element of this recommended Decision, it would appear that the requirement that the caretaker be a relative is one which can be modified only through legislative action.

CONCLUSION:

The Applicants have not identified any legally sufficient unique or unusual characteristic of their property so as to justify the granting of the requested variances. It is accordingly recommended that the requested variances be denied.

Date: May 21, 2004

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner